

Internal Revenue Service

Number: **200747009**

Release Date: 11/23/2007

Index Number: 141.00-00, 141.01-00,
141.01-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:FIP:B5
PLR-119387-07

Date:
August 21, 2007

LEGEND:

State =

Authority =

SPF Bonds =

Series A SPF Bonds =

Revenue Bonds =

Equipment Leases =

Date 1 =

Location A =

Dear

This is in response to your request for a ruling that the Series A SPF Bonds are not private activity bonds within the meaning of § 141 of the Internal Revenue Code because the private security or payment test is not satisfied.

Facts and Representations

You make the following factual representations. Authority is a political subdivision of State, established to coordinate the development and operation of the marine shipping ports of State so as to promote the shipment of cargo and commerce through the ports. State makes annual appropriations to aid Authority in financing capital improvements to its port facilities (the "Port Facilities"), including payment of debt service on certain of Authority's bonds. The source of these appropriations is the State Port Fund (the "SPF") within the State Transportation Trust Fund (the "STTF"). Authority imposes tolls, fees, rentals, and other charges on all shipping lines for shipping their containerized cargo through the Port Facilities.

Authority is required to initiate and further plans for development of the marine shipping ports of State. In financing projects in its capital improvement plan, Authority issues bonds, either its SPF Bonds or its Revenue Bonds, or uses lease financing through its Equipment Leases.

On Date 1, Authority adopted its current resolution authorizing Authority's issuance in one or more series of its SPF Bonds. The SPF Bonds are payable from and secured by the State appropriations from the SPF, and, if amounts from the SPF are insufficient, the SPF Bonds are payable from amounts appropriated from the STTF and the general fund of State. The STTF, including the SPF, consists solely of tax revenues that are generally applicable taxes within the meaning of § 1.141-4(e) of the Income Tax Regulations. Debt service on outstanding SPF Bonds has never been paid from any source other than the SPF. However, Authority has covenanted in the SPF Bond documents that, so long as any SPF Bonds remain outstanding, in the event amounts appropriated from the SPF are insufficient to pay the debt service on the SPF Bonds, it will include in its budget to the State a request for an appropriation of a sum sufficient first from legally available monies in the STTF (outside of the SPF) and then from the general fund of State to cover the deficiency.

The SPF Bonds are not secured by the Port Facilities or the operating revenue of Authority. This allows the financing of capital improvements without the need to increase the charges imposed by Authority on the shipping lines, which improves Authority's competitive position.

Authority's Revenue Bonds are secured, in part, by the net operating revenues (the "Net Operating Revenues") of the Port Facilities, which is the gross operating revenues of the Port Facilities (including all amounts paid by shipping lines to Authority for shipping their cargo through the Port Facilities), net of amounts required under the bond

resolution to pay operating expenses and fund certain reserves. The Revenue Bonds also are secured by these certain reserves. The Revenue Bonds are not secured by the Port Facilities.

The Equipment Leases of Authority are lease financing obligations issued under a resolution for the Revenue Bonds and secured by a pledge of the Net Operating Revenues and a security interest in the financed equipment. The Equipment Leases are subordinate as to payment and security to the Revenue Bonds. Further, under the bond resolution, Authority is required to deposit a portion of the Net Operating Revenues into a certain maintenance reserve prior to funding the debt service on the Equipment Leases.

Authority has determined that future demand for capacity at the ports of State requires not only continuing improvements to the Port Facilities, but also the development of new marine terminal facilities at Location A (the "Location A Project"). To pay for a portion of the capital expenditures of the Location A Project, Authority will issue the Series A SPF Bonds as well as additional SPF Bonds, Revenue Bonds, and Equipment Leases.

Because private shipping lines will use the Location A Project to ship cargo under certain arrangements, the private business use test under § 141(b)(1) will be met with respect to the Series A SPF Bonds.

Authority represents that it reasonably expects that the portion of the Net Operating Revenues remaining after funding the debt service on the Revenue Bonds and the Equipment Leases and the maintenance reserve (the "Remaining Net Operating Revenues") allocable to each issue of SPF Bonds financing the Location A Project (including the Series A SPF Bonds) will not exceed an amount that is 10 percent of the debt service on such issue.

Authority represents that it will not use any of the proceeds of the Series A SPF Bonds, directly or indirectly, to make loans to persons other than governmental units within the meaning of § 141(c).

Law

Section § 103(a) provides generally that gross income does not include interest on any State or local bond. Section 103(b)(1) provides that this exclusion does not apply to any private activity bond unless it is a qualified bond under § 141. Under § 141(a), a bond is a private activity bond if either the private business use test under § 141(b)(1) and the private security or payment test under § 141(b)(2) are satisfied, or the private loan financing test under § 141(c) is satisfied.

Section 141(b)(1) provides, in part, that the private business use test is satisfied if more than 10 percent of the proceeds of the issue are to be used for any private business

use. Section 141(b)(2) provides, in part, that the private security or payments test is satisfied if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of such issue is (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Section 1.141-4(a)(1) provides that the private security or payment test relates to the nature of the security for, and the source of, the payment of debt service on an issue. The private payment portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly to be derived from payments (whether or not to the issuer or any related party) in respect of property, or borrowed money, used or to be used for a private business use. The private security portion of the test takes into account the payment of the debt service on the issue that is directly or indirectly secured by any interest in property used or to be used for a private business use or payments in respect of property used or to be used for a private business use.

Section 1.141-4(a)(2) provides that for purposes of the private security or payment test, payments taken into account as private payments and payments or property taken into account as private security are aggregated. However, the same payments are not taken into account as both private security and private payments.

Section 1.141-4(a)(3) provides that the security for, and payment of debt service on, an issue is determined from both the terms of the bond documents and on the basis of any underlying arrangement. An underlying arrangement may result from separate agreements between the parties or may be determined on the basis of all of the facts and circumstances surrounding the issuance of the bonds. For example, if the payment of debt service on an issue is secured by both a pledge of the full faith and credit of a state or local governmental unit and any interest in property used or to be used in a private business use, the issue meets the private security or payment test.

Section 1.141-4(c)(2)(i)(A) provides that both direct and indirect payments made by any nongovernmental person that is treated as using proceeds of the issue are taken into account as private payments to the extent allocable to the proceeds used by that person. Payments are taken into account as private payments only to the extent that they are made for the period of time that proceeds are used for a private business use. Payments for a use of proceeds include payments (whether or not to the issuer) in respect of property financed (directly or indirectly) with those proceeds, even if not made by a private business user. Payments are not made in respect of financed property if those payments are directly allocable to other property being directly used by the person making the payment and those payments represent fair market value compensation for that other use.

Section 1.141-4(c)(2)(i)(B) provides that payments with respect to proceeds that are used for a private business use are not taken into account to the extent that the present value of those payments exceeds the present value of debt service on those proceeds. Thus, if 7 percent of the proceeds of an issue is used by a person over the measurement period, payments with respect to the property financed with those proceeds are taken into account as private payments only to the extent that the present value of those payments does not exceed the present value of 7 percent of the debt service on the issue.

Section 1.141-4(c)(2)(i)(C) provides that payments by a person for a use of proceeds do not include the portion of any payment that is properly allocable to the payment of ordinary and necessary expenses (as defined under § 162) directly attributable to the operation and maintenance of the financed property used by that person. For this purpose, general overhead and administrative expenses are not directly attributable to those operations and maintenance.

Section 1.141-4(c)(3)(i) provides that private payments for the use of property are allocated to the source or different sources of funding of property. The allocation to the source or different sources of funding is based on all of the facts and circumstances, including whether an allocation is consistent with the purposes of § 141. In general, a private payment for the use of property is allocated to a source of funding based upon the nexus between the payment and both the financed property and the source of funding. For this purpose, different sources of funding may include different tax-exempt issues, taxable issues, and amounts that are not derived from a borrowing, such as revenues of an issuer (equity).

Section 1.141-4(e)(1) provides that for purposes of the private security or payment test, generally applicable taxes are not taken into account (that is, are not payments from a nongovernmental person and are not payments in respect of property used for a private business use).

Analysis

Private Use Test

Authority concedes that the private use test is met. Because the private use test is met, the Series A SPF Bonds will be private activity bonds if the private security or payment test is met.

Private Security or Payment Test

As is the case with all of the SPF Bonds, the Series A SPF Bonds are payable from and secured by State appropriations from the SPF. If amounts from the SPF are insufficient, Authority will include in its budget a request for an appropriation from the STTF and the

general fund of State to pay the debt service on the SPF Bonds. Amounts in the STTF, including the SPF, consist of “generally applicable taxes” within the meaning of § 1.141-4(e). Therefore, the State appropriations are not private payments or security. Further, the SPF Bonds are not secured by the Port Facilities or any other privately used property.

Private shipping lines will pay to use the Location A Project for shipping their cargo under arrangements that give rise to private business use. Authority thus expects that nongovernmental persons will make payments in respect of property that is used for private business use, property financed, in part, by the Series A SPF Bonds and also by other SPF Bonds, Revenue Bonds, and Equipment Leases. The amounts of these payments, as reduced by § 1.141-4(c)(2)(i)(B) (payments not to exceed use) and § 1.141-4(c)(2)(i)(C) (payments for operating expenses), are private payments.

Under § 1.141-4(c)(3)(i), private payments for the use of property are allocated to the source or sources funding the property based on all the facts and circumstances, and generally a payment is allocated to a source based upon the nexus between the payment and both the financed property and the source of funding. However, pursuant to § 1.141-4(a)(2), the same payments are not taken into account as both private security and private payments.

The bond resolution for the Revenue Bonds and the Equipment Leases requires that a portion of the gross operating revenues of the Port Facilities, including those of the Location A Project, fund operating expenses of the Port Facilities and certain reserves, leaving the Net Operating Revenues. The Net Operating Revenues, along with the reserves, are pledged to pay the debt service on the Revenue Bonds and the Equipment Leases, which are subordinate to the Revenue Bonds. The revenues of the Port Facilities are, thus, both private payments and security.

As security for the Revenue Bonds and the Equipment Leases, the Net Operating Revenues and the reserves have a direct nexus to, and are thus properly allocable to, first the Revenue Bonds and then the Equipment Leases. The bond resolution for the Revenue Bonds and the Equipment Leases also requires that the Net Operating Revenues fund the maintenance reserve. Only the remaining amounts, or the Remaining Net Operating Revenues, are available to pay the debt service on the SPF Bonds and, therefore, to be allocated as payments to the SPF Bonds. Authority represents that it reasonably expects that the Remaining Net Operating Revenues allocable to the Series A SPF Bonds will not exceed an amount that is 10 percent of the debt service on the Series A SPF Bonds. Accordingly, Authority expects that the private payments allocable to the Series A SPF Bonds will not be in excess of the amounts permitted by § 141(b)(2).

Conclusion

Based solely on the facts described herein and representations made, we conclude that the Series A SPF Bonds will not meet the private security or payment test of § 141(b)(2) and that, therefore, the Series A SPF Bonds will not be private activity bonds within the meaning of § 141.

We express no opinion as to whether the Series A SPF Bonds will be private activity bonds if the actual amounts of the Remaining Net Operating Revenues allocable to the Series A Bonds exceed the amounts permitted by § 141(b)(2).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By: _____
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